THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
COMMUNITY ANTENNA TELEVISION COMMISSION
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JOHN M. URBAN
Commissioner

(617) 727-6925

January 26, 1992

VIA FEDERAL EXPRESS

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Rate Regulation - Docket No. 92-266

Dear Ms. Searcy:

I have enclosed an original and ten (10) copies of the Comments of the Massachusetts Cable Television Commission for filing in connection with the captioned matter.

Please place me on the service list for this docket matter.

In addition, please mark one copy of these comments "filed" and return it to me in the envelope I have enclosed.

Please do not hesitate to contact me if you should have any questions in connection with this matter. In the meantime, I appreciate your assistance.

Sincerely,

John M. Urban
Commissioner

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
	)	
Rate Regulation	)	

COMMENTS OF THE MASSACHUSETTS COMMUNITY ANTENNA TELEVISION COMMISSION

I. Introduction

The Massachusetts Community Antenna Television Commission (the "Massachusetts Commission") is the state agency charged with regulating the cable television industry in Massachusetts pursuant to Massachusetts General Law Chapter 166A. The Massachusetts Commission's responsibilities include representing the interests of the citizens of the Commonwealth of Massachusetts before the Federal Communications Commission (the "FCC"). M.G.L. Ch. 166A, §16 (1990). Therefore, the Massachusetts Commission has a direct interest in the outcome of this proceeding.

We will comment on some but not all of the questions posed by the FCC in its Notice of Proposed Rulemaking, released December 24, 1992 (the "Notice") pursuant to the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (1992) (the "1992 Act" or the "Act"). (See Table of Contents.) The 1992 Act amends the Cable Communications and Policy Act of 1984, 47 U.S.C. §§ 151, 224, 521-559, 605 (1991)

(the "1984 Act").

II. Authority to Regulate Rates

The FCC seeks comment "on whether franchising authorities derive their powers to regulate from state and local laws alone, or whether the Act may itself be an independent source of authority to regulate rates." Notice, Paragraph 20. The Massachusetts Commission believes that Congress intended both the 1992 Act and state law to be sources of authority for the regulation of rates for the provision of basic cable service. To the extent state law is not preempted by the 1992 Act, we believe it was Congress' intent that state law should be given its full force and effect. This question is important to the Massachusetts Commission because if it is not answered, it remains unclear which, if either, governmental body in Massachusetts has the authority to regulate rates - the local government or the Massachusetts Commission.

The 1992 Act states that "[a]ny franchising authority may regulate the rates for the provision of cable service, or any other communications service provided over a cable system to cable subscribers, but only to the extent provided under this section." Pub. L. No. 102-385, §3(a)(1)(1992). "Franchising authority" is defined by the 1984 Act as "any governmental entity empowered by Federal, State or local law to grant a franchise." 47 U.S.C. §522(9)(1991). Pursuant to Massachusetts law, anyone constructing or operating a cable television system by means of wires or cables must first obtain a license "from each city or

town in which such wires or cables are to be installed . . . ." M.G.L. Ch. 166A, §3 (1990). State law then defines an "issuing authority" as "the city manager of a city having a plan D or E charter, the Mayor of any other city, or the Board of Selectmen of a town." M.G.L. Ch. 166A, §1(d)(1990). If one were to read only these provisions of state and federal law, one could arguably conclude that local governments are the appropriate entity to regulate rates for basic service in Massachusetts.

However, we believe that to read state and federal statutes as mere compilations of definitions would be to ignore the complexity of these laws. The 1992 Act implies that the state will have some role in the process of rate regulation. "No Federal agency, State, or franchising authority may regulate the rates for cable service of a cable system that is owned or operated by a local government or franchising authority . . . ." Pub. L. No. 102-385, §3(a)(1)(1992). In addition, the FCC seems to anticipate some rate regulation role for entities such as the Massachusetts Commission in its statement that "in some areas, a franchising authority's rate determination may be subject to review by a higher level of local or state authority . . . ." Notice, Paragraph 82.

Further, the 1992 Act empowers the FCC to certify franchising authorities to regulate rates if, among other things, the franchising authority certifies to the FCC that it has the legal authority to adopt regulations in concert with the FCC's regulations. Pub. L. No. 102-385, §3(a)(3)(B)(1992). The FCC

has asked: "[i]f the Cable Act grants franchise authorities rate regulation powers irrespective of state law, what did Congress intend by enacting [this provision]?" Notice, Paragraph 20. The Massachusetts Commission believes that the term "legal authority" as used in this section of the Act must mean the explicit authority given to the local government to regulate rates or at least the implicit authority to do so. In Massachusetts, state law explicitly gives the power to regulate rates to the Massachusetts Commission. M.G.L. Ch. 166A, § 15(1990) Therefore, at least by implication, parties may argue that local governments are prohibited from regulating rates for the provision of cable service unless such regulation is conducted pursuant to regulations enacted by the Massachusetts Commission.

Massachusetts law and the regulations promulgated by the Massachusetts Commission thereunder establish a structure of both state and local involvement in the franchising process and regulation of cable television operators. For example, in certain instances, the Massachusetts Commission may revoke, suspend, or declare forfeited an operator's franchise. M.G.L. Ch. 166A, §§11, 14 (1990). Further, the form of application for a franchise is created by the Massachusetts Commission and the Massachusetts Commission has the authority to incorporate mandatory license provisions in this document thus making the Massachusetts Commission, in part, a party to the issuing of a license. In addition, although the Massachusetts Commission has left most decisions to local governments to negotiate with their

cable provider, in many areas the Massachusetts Commission's regulations establish the parameters within which a local government must negotiate. For example, the Massachusetts Commission has enacted extensive regulations to govern billing and termination practices of cable operators. 207 CMR 10.01-10.10 (1990). Therefore, the role of the Massachusetts Commission overlaps that of an issuing authority in certain key areas.

A state law will be preempted in three situations: (1) if federal law explicitly states that it preempts all state regulation of the particular subject area, (2) if federal law is found to be so comprehensive as to leave no room for further regulation by the states, or (3) if the provisions of state law conflict with federal law. The 1992 Act does not explicitly state that it preempts state law nor is the 1984 Act, as amended by the 1992 Act, so comprehensive as to occupy the entire field of cable television law. In fact, as discussed above, the Massachusetts Commission believes the 1992 Act preserves the role of the state in the rate regulation scheme. We do not believe that Congress sought to override the division of authority established by state law nor that the statutory laws of Massachusetts regarding rate regulation conflict with the 1992 Act. Read in conjunction with the provisions of the 1992 Act, the Massachusetts statute appears to allow the Massachusetts Commission to apply for certification from the FCC to be the franchising authority for rate regulation purposes in the

Commonwealth of Massachusetts.

The Massachusetts Commission requests clarification from the FCC on this matter. Otherwise, we believe that if a local government sought certification to regulate rates, parties could argue that the local government does not have the "legal authority" to adopt regulations pursuant to which it will regulate rates. Likewise, if the Massachusetts Commission sought certification to regulate rates, parties could argue that it is not a franchising authority. This situation could create a possible rate regulation gridlock with neither the Massachusetts Commission nor the local governments able to regulate rates. We seek the FCC's clarification in order to avoid this roadblock and look for an interpretation which will allow us to involve local communities as envisioned by state law in a manner consistent with any forthcoming rules and regulations promulgated by the FCC.

III. Methodology of Rate Regulation

The FCC states that "[w]e tentatively conclude that we should not select cost-of-service regulation as the primary mode of regulation of cable service rates . . . [and] we initially find that we should adopt a benchmark regulatory alternative. . . or a simple formula which could be used to derive such a rate. Rates above the benchmark would be presumed unreasonable. At the same time, cost-of-service regulation on an individual system basis could be applied to cable systems seeking to justify a rate above the benchmark." Notice, Paragraph 2. Based on the

Massachusetts Commission's experience with cost-of-service rate regulation, the Massachusetts Commission supports the FCC's tentative decision to use a benchmark to determine basic service tier rates.[1] We would be very concerned about a methodology that required every franchising authority to conduct a traditional cost-of-service analysis as we would view this as a frequently futile exercise, especially in consideration of the fact that basic tier rates are but a portion of the subscriber's monthly bill.

In developing the benchmark, we would recommend that the FCC not rely exclusively on rates charged by systems facing effective competition because these isolated instances of competition may

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[1] Prior to deregulating rates for the provision of cable services, the Massachusetts Commission employed several different techniques of rate regulation. Initially, cost-of-service regulation was conducted on the local level with de novo appeals being heard by the Massachusetts Commission. Later, the Massachusetts Commission allowed for rate regulation on a consolidated basis upon the request of an operator who had integrated cable systems in two or more communities.

Two years after assuming jurisdiction of rate regulation, the Massachusetts Commission issued a Notice of Inquiry and Proposed Rulemaking to simplify the rate regulation procedure because "most municipalities have had difficulty in committing the resources required to recommend rates to the [Massachusetts] Commission or to present their cases as parties." Notice of Inquiry and Proposed Rulemaking, dated July 6, 1976, page 1. Although the simplified system of regulation was found to be unworkable, the Massachusetts Commission had to act to relieve the burden placed on communities. "Many issuing authorities have found that the legal and financial complexities of rate regulation demand resources and expertise not generally available to them." Notice of Proposed Rulemaking, Docket No. R-2, March 6, 1978, page 3.

The experience of the Massachusetts Commission with cost-of-service rate regulation is fraught with frustration. The procedure for rate regulation was slow and arduous for local communities, the operators and the Massachusetts Commission.

represent situations where rates are, in the short term, being charged without regard to cost. Further, these competitive systems may represent markets that have unique economic characteristics (and thus the reason why they are the competitive anomaly). Likewise, we have reservations about using average current rates as an index because this could result in an index made up of average rates that are unreasonably high average rates.

We believe that the FCC should select either (1) a Cost-of-Service Benchmark based on an "ideal" system (Notice, Paragraph 48), or (2) a "Corrected" Past Regulated Rate Benchmark (Notice, Paragraph 44). It is our opinion that either would provide an adequate level of regulation while minimizing administrative costs and burdens. Upon passage of the 1992 Act, our office developed a very simple preliminary formula designed to examine "corrected" past rates by factoring a CPI increase and an allocated increase for any franchisor-imposed costs that were introduced between our 1984 index date and today. While our preliminary review found this type of model to be adequate, we would prefer a benchmark that is based on data that reflects the significant changes that have occurred in programming, operations, customer service and technology since 1984. We are keenly interested in the FCC's 850 system sample that was part of this rulemaking and we believe that benchmark rates developed from this sample would be preferable to corrected past rates.

The FCC tentatively concludes that when an operator seeks to

justify basic service tier rates above the benchmark, a cost-of-service justification and analysis could be used to review the rate's reasonableness. Notice, Paragraph 2. We have some concern regarding the cost-of-service determinations that would be required in these instances. While this methodology could provide a regulatory release valve in instances where the benchmark would otherwise be confiscatory, it could also serve as an open door for cable operators who, knowing well the regulators' frequent futility with cost-of-service assessments, seek higher than reasonable rates. This could lead to the very type of regulatory problems that the FCC is seeking to avoid by selecting a benchmark approach. While we give overall support to this combined benchmark/cost-of-service methodology, we note that the FCC will have an ongoing interest in reviewing, and perhaps modifying, the cost-of-service aspect of this combined approach.

The FCC also asks the question of whether or not "the purpose and the terms of the Cable Act embody a congressional intent that our rules produce rates generally lower than those in effect when the Cable Act of 1992 was enacted. . . ." Notice, Paragraph 4. It is the Massachusetts Commission's opinion that the FCC should develop its rate model with an emphasis on objectively determining reasonable rates rather than with an emphasis on reducing rates. We believe that it is unlikely that, given the past absence of competition, cable operators denied themselves a reasonable return for "basic service tier" or "cable

programming service" rates.[2] Therefore, we do not expect, absent any new cost elements, that the FCC's methodology will produce a marked increase in rates. On the other hand, we would be somewhat surprised to find that not one cable operator in the country was charging an unreasonable rate. Therefore, we expect to see at least some instances where lower rates are the product of the FCC's rules. However, we emphasize that any rate decreases should be a result of what is reasonable and not a result of an over-reaching interest in lowering subscriber bills.

The FCC proposes that the initial review of basic cable rates would provide a 120 day period for a franchise authority to consider whether or not rates were reasonable. See Notice, Paragraph 80. We support this position but believe the 120 day clock should begin once the operator has filed all pertinent information and has responded to all pertinent information requests made by the franchise authority in a timely manner.

For review of rate increases subsequent to the initial review of basic tier rates, the Massachusetts Commission supports the FCC's proposal that, after a relatively brief notice period, a rate increase would become effective unless a franchising authority had rejected it. Notice, Paragraph 82. We recommend that the FCC rules provide for a 90 day period for franchise review of a rate increase with an extension of this time frame

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[2] We do note that installation rates often have been charged below or at no cost in an attempt to increase subscription to services that, presumably, provided the operator with a reasonable return.

for complex cases. In both initial rate review and rate increase review, the clock should not begin until the operator has filed all pertinent information and has responded to all pertinent information requests made by the franchise authority in a timely manner.

A. Regulation of Rates for Equipment

The 1992 Act relies on a cost-based determination for equipment charges. Pub. L. No. 102-385, §3(b)(3)(1992). While cost allocations, inter-company charges and the like could beleaguer a cost-of-service analysis of the basic tier (or any other tiers or combinations), we believe that a cost analysis of equipment and installation charges incorporates more discrete data which would lend itself to a manageable analysis. We favor a cost-of-service approach for equipment and installation rate determinations; we recommend against a benchmark methodology for these rates.

We anticipate that the question of open entry to the cable television customer premises equipment market will be considered as part of the FCC's forthcoming equipment compatibility study. This future determination will present great challenges due to the many difficult issues concerning signal security and egress. However, we believe that wiring and customer premises equipment are important portions of the cable television industry that can be opened to increased competition.

We also believe that this current rulemaking provides the FCC with an opportunity to take a significant initial step with

regard to furthering competition. This first step could be the introduction of competition for the provision of remote control devices. The recent past history of remote control pricing has presented examples of dramatic over-pricing as well as unnecessary restrictions on entry. While many expect this practice to be curtailed as a result of rate regulation, this issue also, and perhaps more efficiently, can be addressed through increased competition. The Massachusetts Commission agrees with congressional policy as outline in the 1992 Act, that when competition can provide consumer choice and efficient markets, it is preferable to regulation. Pub. L. No. 102-385, §2(b)(2)(1992). Therefore, we include in our comments the following proposed rules which would serve as the first step for customer premises equipment deregulation and competition:

PROPOSED RULES FOR CONSIDERATION

1. Cable television operators may not interfere with, penalize, or in any way deny cable service or remote control access service to any cable subscriber who uses his or her own remote control device in interaction with a cable operator's converter box.

2. Cable television operators who sell, lease or rent remote control units must make available the infrared signal that activates the channel selector to all subscribers regardless of whether or not the infrared signal is used to activate the operator's remote control unit or the subscriber's remote control unit(s).

3. Cable television operators may charge a reasonable rate for infrared remote "access" providing that:

    a) operators who charge a remote access rate must charge the same rate to subscribers with operator-owned remote control units as they charge to subscribers with company-owned remote control units;

b) remote access rates may not be charged to any subscriber who has a remote access-compatible television set if the television's infrared remote access service is disabled by the installation of the converter box.

These proposed rules would open the remote control market to manufacturers, distributors and dealers. Adopting such rules would also mark an important step toward opening the entire customer premises equipment market to competition.[3] Significantly, where effective competition exists, the need for regulation would be negated.

As noted above, in the absence of equipment competition, the FCC is charged by Congress with prescribing rates on the basis of actual cost. Pub. L. No. 102-385, §3(b)(3)(1992). The FCC states that "[w]e propose requiring operators to base charges for equipment covered by Section 623(b)(3) on direct costs, and indirect cost allocations, including reasonable general administrative loadings and a reasonable profit." Notice, Paragraph 66 (footnote omitted). The Massachusetts Commission supports this statement. Moreover, we suggest that the FCC investigate a pricing scheme that would disallow consideration of costs for equipment or components of equipment that are

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[3] We believe that increased competition in the cable television customer premises equipment market is a way to increase consumer choice, stimulate entrepreneurial activity and potentially lower rates. We are concerned that the need for an open customer premises equipment market will be even greater in the near future if predictions of a "smarter" converter box are true. We believe that the FCC needs to ensure maximum entry in this market before a smarter converter box becomes a restricted gateway that could be used in an anti-competitive manner.

unnecessary and/or redundant. Specifically, we question the need to factor the cost of the converter box's tuner when a large percentage of today's televisions are already equipped with comparable (or superior) tuners.[4] We expect that increased scrambling as a result of the 1992 Act's buy-through provisions may result in the further use of converters (essentially forced use of converters). We respect and support the cable operator's right to receive a reasonable return on any necessary equipment. However, we are concerned about charges for equipment (or components of equipment) that is or are not necessary, and we are concerned about the presence of possible incentives to require equipment that subscribers do not need.

The FCC states that "[w]e believe that our rules should clarify the relationship between Section 623(b)(3), which requires regulating, on the basis of actual cost, 'equipment used for the basic tier,' and Section 623(c), requiring regulations for cable programming services, which includes the installation or rental of equipment used for the receipt of such programming services. For the latter, the Commission must establish standards for determining whether the rates are unreasonable and, as for the basic tier service, cost is to be only one of those factors to consider." Notice, Paragraph 64. It is our interpretation that the franchising authority's regulation of equipment used for receipt of the basic tier would be de facto

[4] In addition, legal cable tuners are available commercially to those who do not have cable ready television sets.

regulation of equipment used for receipt of cable programming services in all cases in which identical equipment is used. For example, if a franchising authority determines, using the forthcoming FCC methodology, that a converter charge for the receipt of basic tier services is $X and that identical piece of equipment is used for receipt of cable programming services, the cost should remain at $X. Any variation in price would appear to represent rate discrimination. On the other hand, equipment that is not used for receipt of basic service, such as a "digital music" subscriber box, would not be under the jurisdiction of the franchising authority as it is not used for receipt of the basic service tier.

B. Cable Programming Services Regulation

The FCC states that "[t]he statute requires the Commission to establish regulations that assure that rates for the basic service tier are reasonable, whereas for cable programming services we must establish standards that permit identification in individual cases of rates that are unreasonable." Notice, Footnote 127. The Massachusetts Commission is well aware of the possible regulatory burdens that could be placed on the FCC as a result of its responsibilities for cable programming services regulation. However, we are concerned that if regulation for one service level is less rigorous than regulation for another service level, cable operators may move rate increases into the area of less rigorous enforcement thereby producing artificially affected rate structures. These rate increases would not be

based on cost or pricing economics but rather they would be based on the regulatory structure. We view this matter with concern. We believe that the FCC should develop a benchmark for cable programming services, to be used as a primary rate analysis tool, but we also recommend that the FCC consider retaining the right to enter into a cost-of-service analysis at any time the FCC deems an operator's cable programming services to be unreasonably priced.

IV. Effective Competition

A. Test for Assessing Effective Competition

We concur with the FCC's conclusion that Congress intended for a cumulative assessment of alternative multichannel video programming distributors when determining effective competition. Notice, Paragraph 9. We note with agreement that the effective competition threshold could be met by the combination of two or more competitors, yet we mention that the 1992 Act calls for this threshold figure to be reached when the subscriber count exceeds, not totals, fifteen percent. Pub. L. No. 102-385, §3(l)(1)(B)(ii)(1992). In addition, we note that the FCC may want to clarify whether or not each competitor used to calculate the fifteen percent threshold would have to offer service to at least fifty percent of the franchise area. For example, if a Satellite Master Antenna Television ("SMATV") operator offers service to less than fifty percent of the franchise households, but has a subscription level of ten percent of the households in the franchise area, could this be added to a second wireless

operator that offers service to the entire franchise area, but has only six percent of the households as subscribers (the combination of which would exceed the fifteen percent threshold)?

In a related matter, the FCC asks the question of whether or not video dialtone service should be considered to be a multichannel video programming service and as such be considered in assessing the presence of effective competition. Notice, Paragraph 9. We conditionally state that video dialtone should be included as an effective competition competitor. As conditions, we believe that (1) the video dialtone programming services themselves would have to be "comparable", and (2) the number of channels offered would need to be "comparable". However, we recommend that the FCC postpone its determination of comparability until video dialtone becomes a more mature industry and is more widely available.[5]

In another related matter dealing with the assessment of

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[5] While we anticipate that some may argue that video dialtone's switched architecture delivers one signal at a time, as opposed to multiple channels, its switched nature provides multi-channel capability.

On a related point, the 1992 Act uses the term "households" when determining effective competition. Pub. L. No. 102-385, §3(l)(1)(1992). The telephone industry's access to commercial and residential buildings alike may mean that video dialtone serves a considerable number of business subscribers. In addition, we have seen some evidence that the cable industry is marketing what have historically been residential services (such as CNN and C-SPAN) to commercial users. Therefore, we support the FCC's definition of "household" (Notice, Paragraph 8) and believe it would apply equally to residential and commercial subscribers. (But see comments regarding this definition on following page.)

effective competition, the Massachusetts Commission points out that should the FCC allow for bulk rate agreements, it may want to amend or clarify its proposed definition of "household" (Notice, Paragraph 8) so as to include an accounting for each unit of the multiple dwelling unit ("MDU"). We would anticipate that failure to make this clarification would result in misrepresentations of effective competition.

B. Burden of Proof Regarding Effective Competition

As noted by the FCC, Congress has directed the FCC to "'find' that a cable system is not subject to effective competition before authorizing rate regulation." Notice, Paragraph 17. In turn, the FCC proposes to delegate this responsibility to local governments. Notice, Paragraph 17. Specifically, the FCC states "we find it reasonable to require that local franchising authorities provide evidence of the lack of effective competition as a threshold matter of jurisdiction . . . [as] franchising authorities may be in a superior position to gather relevant local facts and to test the accuracy of operators' representations regarding competition." Notice, Paragraph 17. The Massachusetts Commission agrees that franchising authorities will likely have data regarding locally franchised cable operators, but we question whether franchising authorities will have data regarding Multichannel Multipoint Distribution Service ("MMDS"), Direct Broadcast Satellite ("DBS"), video dialtone, or even SMATV subscription levels. The Massachusetts Commission, therefore, believes that it is proper

and reasonable for franchising authorities to initially conclude, unless faced with a preponderance of evidence to the contrary, that there is an absence of effective competition. This would put the onus on the cable operator, who would have greater access to industry data as well as access to public data held by the franchising authority, to show a presence of effective competition. Absent a challenge by the affected cable operator, the FCC would have the necessary information to determine, as required by Congress, that there is an absence of competition.

V. Certification of Franchise Authority

A. Certification Process

The FCC recognizes that a community may desire to regulate rates "but for other reasons, such as lack of personnel, is unable to make the requisite certification." Notice, Footnote 32. The FCC then asks whether or not a franchise authority should be permitted to file a statement explaining why it cannot submit a certification and request that the FCC assert rate regulation jurisdiction. Notice, Footnote 32. The Massachusetts Commission believes that this would be an appropriate exercise of FCC jurisdiction. Either a community could be required to submit a written statement attesting to its situation, or, in the alternative, the FCC could amend the proposed certification form to include a line that would allow the franchising authority to declare that it has the legal authority, but not the personnel necessary for rate regulation and that it therefore is requesting the FCC to administer rate regulation.

The FCC has tentatively concluded that if it certifies a franchise authority to regulate rates, the franchise authority would be required "to notify each franchisee within 10 days of this decision." Notice, Paragraph 24. We concur that the certified franchising authority should notify the regulated cable operator upon certification; however, we recommend that this period of notification be lengthened from the proposed 10 days to 30 days from the date of the FCC's decision. In addition, we request that the FCC include a clear statement as to the need to notify franchisees in its letter of certification to the franchise authority.

In cases in which either a franchising authority is found to be governed by inconsistent rules and regulations or a franchising authority is found to have applied its authority in an inconsistent manner, we would suggest that the FCC take the interim step of issuing a Notice of Intent to Revoke Certification (a "Notice of Intent") prior to an actual Revocation. The Notice of Intent could allow the franchising authority an appropriate period of time, such as 30 days, in which to amend its rules and regulations or correct its practices and then evidence its corrective action to the FCC's satisfaction. Only after a failure to respond adequately to a Notice of Intent would a Notice of Revocation be sent by the FCC.

We do not believe that the proposed 15 day time frame in which a franchising authority is to respond to a petition for revocation of its certification to regulate rates is adequate.

See Notice, Paragraph 27. Based on the consideration that many government bodies officially meet only once a week, we believe it would be difficult to expect that the franchise authority could meet on the matter, research and draft a response, and approve the response all within a 15 day period. Therefore, we suggest a the franchising authority be given a 30 day period for a Notice of Intent followed by a second 30 day period for a Notice of Revocation.

B. Joint Rate Regulation Certification

The FCC proposes to allow two or more franchising authorities served by the same cable system to file a joint certification and exercise joint regulatory jurisdiction. Notice, Paragraph 21. The Massachusetts Commission supports the FCC's position to allow two or more franchising authorities served by the same system to file a joint certification and exercise joint regulatory jurisdiction. It is common in Massachusetts for a single cable system to service several contiguous communities that are under separate franchise agreements. The Massachusetts Commission supports the right of local franchise authorities to form a regional authority for the purpose of cable television franchising, and likewise supports a regional authority for the purpose of rate regulation.[6]

[6] We have submitted a bill before the Massachusetts state legislature to amend state law to allow for regional franchising in cases in which individual franchising authorities agree to form a regional franchise.

The Massachusetts Commission does not believe, however, that joint certification filings should be a mandatory requirement. To establish boundaries that are beyond the political subdivisions empowered by state and federal law to regulate cable television would be a significant departure from current cable regulation and a usurpation of local community rights.[7] In our opinion, the decision to file jointly for rate regulation certification should be left to the sole discretion of the individual franchise authorities.

Although we do not believe that joint certification filing should be mandatory, there exists a natural incentive for franchise authorities served by a single cable system to do so. In certain circumstances, joint regulatory oversight will maximize efficiencies by creating economies of scale for fiscally challenged local governments. If a benchmark approach for rate regulation is used, the individual franchise authority may be less burdened with the regulatory process and, therefore, will have the ability and resources necessary to retain local control over the process. However, under the proposed rules, if a cable operator's rates for cable service within a single cable system service area exceed the benchmark, the cost-of-service approach is applied. At this point there may be an incentive for communities served by the same cable system to combine efforts in regulating rates. Joint regulation at this time would also

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[7] See also the section of these comments entitled Uniform Rates for Franchise v. Geographic Areas, page 38.

promote the congressional mandate that the FCC, in prescribing its rules, "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities and the Commission." Pub. L. No. 102-385, §3(b)(2)(A)(1992).

We propose that the FCC adopt rules that allow local franchise authorities the flexibility to move from independent rate regulation oversight to joint rate regulation oversight. We propose that a community be allowed to request joint rate regulation by indicating on its original request for certification form that it wishes to do so, and by identifying the other franchise authorities which are served by the same system that will comprise the joint rate regulating authority. Each of the franchising authorities requesting joint certification would be required to file separate forms for certification.

We further propose that a community, previously certified by the FCC to independently regulate rates, now wishing to move from independent rate regulation to joint rate regulation would be allowed to file for recertification on a joint basis. Each franchising authority requesting such joint certification would be required to file separate recertification forms which would include the identity of the cable system and the other franchise authorities that would comprise the joint regulation authority.[8]

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[8] Appendix D of the Notice only addresses an initial independent certification. We suggest that it should be revised to accommodate an initial joint filing and a recertification of a franchise authority which has previously been certified to regulate rates on an independent (not joint) basis. We recommend that the

To ensure that this is an orderly process, the FCC may want to identify an annual date for all "change of status" recertification filings.

VI. Subscriber Bill Itemization

A. Components

The FCC has asked for comments on regulations necessary to adequately implement the bill itemization portions of the 1984 Act, as amended by the 1992 Act. Notice, Paragraph 175.[9] The Massachusetts Commission has three recommendations with regard to this provision. They are that (1) the costs and the components thereof which may be itemized be clearly established, (2) the franchising authority be given the information it needs to monitor the accuracy of these costs, and (3) the calculation and the appearance of the itemization amount be uniform and accurate.

Pursuant to the 1992 Act, the FCC is required to take into

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same rules which apply to initial certification apply to recertification.

For a discussion of how a cable operator may meet the mandate of the Act which requires a uniform rate structure throughout a geographic area in the event a franchise authority decides to proceed with rate regulation independently, please refer to the section of these comments entitled Uniform Rates for Franchise v. Geographic Areas, page 38.

[9] The bill itemization provision of the 1984 Act, as amended by the 1992 Act, permits a cable operator to itemize on each regular subscriber bill (1) the amount of the bill attributable to the franchise fee and the identity of the franchising authority to which the fee is paid, (2) the amount of the total bill which satisfies requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels and (3) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber. Pub. L. No. 102-385, §14(1992).